

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6449

Joint petition of The Furst Group, Inc.)
and Zone Telecom, Inc. for Approval)
of an Asset Purchase Agreement)

Order entered: 12/28/2000

I. INTRODUCTION

On October 9, 2000, The Furst Group, Inc. ("Furst") and Zone Telecom, Inc. ("Zone") (collectively the "Petitioners") filed a joint petition ("Petition") seeking approval from the Vermont Public Service Board ("Board") pursuant to 30 V.S.A. §§ 107, 109 and 311 for the sale of assets of Furst to Zone pursuant to their Asset Purchase Agreement ("Agreement") and a revocation of Furst's Certificate of Public Good ("CPG"). The Vermont Department of Public Service ("Department") filed a letter, dated December 7, 2000, with the Board in which it recommended that the Board approve the petition without the need for hearing or investigation. The Department also commented that the transaction will not detrimentally impact consumers and should not cause them inconvenience or confusion.

The Board has reviewed the petition and accompanying documents and agrees that the petition should be approved without a hearing.

II. FINDINGS

1. Zone is a Delaware corporation, which was issued CPG No. 602-R on October 16, 2000, to provide resold telecommunications services in Vermont. Petition at 1 and CPG No. 602-R.
2. Furst is a New Jersey corporation, which was issued CPG No. 194 on March 25, 1996, to provide resold telecommunications services in Vermont. Petition at 1 and CPG No. 194.
3. The Petitioners are seeking approval of a transaction whereby Zone seeks to

acquire the assets of Furst in connection with the provision of resold retail and wholesale interLATA long-distance services to residential and business customers in Vermont. The consideration to be paid by Zone in exchange for the Furst assets will be in the form of cash, stock and assumption of preexisting liabilities of Furst by Zone. Following the completion of the transaction, Furst will cease offering its services. Petition at 1.

4. The transaction will be transparent to customers within the State of Vermont. Furst and Zone have notified customers of the transactions and it will not result in any charges or service changes. As such, this transaction will not cause inconvenience or confusion to the customers of Furst. Petition at 3.

5. The transaction will serve the public interest in promoting competition in the telecommunications market by providing the opportunity to Zone to strengthen its competitive position through the purchase of Furst's assets, including transfer of its customer base. Petition at 3.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 107, 109 and 311. These statutes condition approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A § 107). The statutes also condition approval of a merger or sale of assets upon a finding that the acquisition will promote the public good (30 V.S.A. § 109) and will not obstruct or prevent competition (30 V.S.A § 311). These standards are met in this case.

The proposed sale of assets of Furst to Zone will promote the public good because it will enable the resulting firm to realize significant economies of scale. Further, the market for telecommunications services in Vermont is competitive. Zone is a nondominant firm in the market for intrastate toll telecommunications services in Vermont, and there is no evidence to suggest that Zone will become dominant as a result of the proposed merger. Thus, the sale of assets of Furst to Zone will not have any detrimental impact on competition in the Vermont market for telecommunications services.

In addition, the Board finds the reasons articulated by Furst in support of its request for revocation of its CPG to be convincing. This finding, together with the fact that no opposition to Furst's filing has been registered with the Board, leads us to conclude that Furst's CPG should be revoked. While 30 V.S.A. §§ 102(c) and 231(a) require an opportunity for hearing before revocation of a CPG is allowed, we note that Rule 56 of the V.R.C.P. provides that where no genuine issue of material fact exists, a hearing is not necessary. We find that the requirements of V.R.C.P. Rule 56 are met in this case and, therefore, grant Furst's request without a hearing.

If Zone will be providing any services to the former customers of Furst other than those services that are included in Zone's tariff, then Zone must file appropriate tariff revisions, pursuant to 30 V.S.A. Section 225.

For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. §§ 107, 109 and 311, and should be approved.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The sale of assets of The Furst Group, Inc. to Zone Telecom, Inc. will not obstruct or prevent competition in the market for telecommunications services in Vermont and, therefore, is approved.
2. A Certificate of Consent to the sale of assets shall be issued.
3. The transfer of control of The Furst Group, Inc. to Zone Telecom, Inc. will promote the public good and, therefore, is approved.
4. Within one week of the closing of the transaction, the Petitioners shall file a letter notifying the Board that the closing has occurred.
5. The Certificate of Public Good granted to The Furst Group, Inc. on March 25, 1996, is revoked, upon the completion of the transaction.
6. If Zone Telecom, Inc. will be providing any services to the former customers of The Furst Group, Inc. other than those services that are included in Zone's tariff, then

Zone must file appropriate tariff revisions, pursuant to 30 V.S.A. Section 225.

7. If Zone Telecom, Inc. proposes to offer prepaid calling card services, it shall post a bond, payable to the Board, in an amount equivalent to its projected intrastate revenues from its prepaid calling card service for the first twelve (12) months of operation.

DATED at Montpelier, Vermont, this 28th day of December, 2000.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
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OFFICE OF THE CLERK

Filed: December 28, 2000

Attest: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or mail) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.